In the High Court of Judicature at Madras

Dated:06.02.2007

Coram

The Honourable Mr.Justice A.C.ARUMUGAPERUMAL ADITYAN

Second Appeal No.550 OF 1997

1.M.Krishnan
2.A.Subramaniam
3.S.venkatesan
4.A.R.Chinnamuthu
5.Palanisamy
6.C.Palanisamy
7.R.Gopalakrishnan
8.Palanisamy
9.Ranganayaki
10.P.velusamy
11.Ranganathan
12.K.Eswari

..Appellants
[Defendants 1 to 12]

v

1. R.Marimuthu
2.G.Subramanian
3.K.Palanisamy
4.P.K.Palanisamy
5.M.Arumugam
6.The State of Tamil Nadu
rep. By the District Collector,
Coimbatore

..Respondents
[Plaitiff and 13th Respondent].

Second appeal filed against the judgment and decree dated 4.10.1996 made in A.S.No.63 of 1996 on the file of the Court of II Additional District Judge,Coimbatore reversing the Judgment and decree in O.S.No.3163 of 1990 dated 24.2.1995 on the file of the Court of Principal District Munif, Coimbatore.

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For Appellants : Mr.P.Mathivanan
For Respondents 1 to 5. : Mr.V.Nicholas.
For 6th Respondent : Mrs.Shanthi Rakkappan, Govt. Advocate.

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JUDGMENT

This appeal has been preferred against the decree and Judgment and decree in A.S.No.63 of 1996 on the file of the Court of II Additional District Judge, Coimbatore. The defendants 1 to 12 who have lost their defence before the first appellate Court are the appellants herein. The suit is for bare injunction.

2. The facts in brief in the amended plaint relevant for the purpose of deciding this appeal are as follows:
The plaintiffs are residing in the Government Poramboke land bearing S.Nos.75/3 and 76/3 in Uppilipalayam Village, Coimbatore Taluk. The said lands ramain a waste lands. The plaintiffs who hail from poor and down-trodden society without any house of their own for their shelter have occupied the said land in property and have put up 18 huts about thirty years ago. In the year 1970,they converted the thatched roof into that of a pucca tiled house and ever since they are residing in the said row of houses. Since the land in which the plaintiffs have put up their huts belongs to the Government, they were no obstruction or abstacle from any quarter. The revenue officials have also levied "B" memo tax to the plaintiffs . The plaintiffs are in possession and enjoyment of the plaint suit property. The defendants who hail from upper caste and who being rich are not liking to have the plaintiffs in the survey fields, the defendants have started giving all sorts of troubles. The defendants are having their property on the eastern side and western side of the plaintiffs' houses. The defendants are making all sorts of troubles to throw away the plaintiffs from the suit property. After having failed in all their attempts, the defendants started collecting their hirelings and rowdy elements and began to openly threat that they are going to destroy all the houses by using bulldozers. On 17.12.1990, the defendants have collected number of their hirelings and rowdy elements and came to the suit property and threatened the plaintiffs with dire consequences in the event of not removing the huts from the suit properties. The defendants have no right or title in respect of the suit property. If at all any action could be taken it is only by the Government. If the defendants are allowed to succeed in their attempts in thwarting the defendants in the suit property then the plaintiffs have no other shoulder to reside, they will practically be thrown out in the street. Hence the suit.

3. Defendants 2 to 12 have adopted the written statement filed by the first defendants as follows:
Survey No.75/3 and 76/3, Uppilipalayam (Singanallur) Village are poramboke lands which are classified as Road Poramboke in the revenue records. The plaintiffs are not in possession of the plaint schedule propeprrpty for the past thirty years. The allegations that there are 18 pucca tiled houses put up by the plaintiffs in the suit property is not true. The construction is the recent one. There was no assessment of B memo tax

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to the suit property as alleged by the plaintiffs. Many of the plaintiffs are provided with patta lands at various other places. Admittedly, the defendants are residing on the east and west of the suit property. Only through the occupied area of the plaintiffs, the corpse were taken to graveyard. Because of their recent occupation, the plaintiffs are obstructing the pathway leading to the graveyard. The defendants have not made any attempt to destroy the houses put up by the plaintiffs in the suit property with the help of the hirelings and rowdy elements. The Government is going to take action against the plaintiffs on the representation made by the defendants. The defendants have filed writ petition in this regard before the High Court, Madras and the said writ petition is still pending. The plaintiffs have also entered into the patta land belonging to the defendants. The defendants have taken necessary steps to evict the plaintiffs from the encroached area. There is no cause of action. Hence the suit is liable to be dismissed.

4)13th Defendant has filed a separate written statement with the following averments:
The suit without notice under Section 80 CPC is not maintainable. The averment in the plaint to the effect that the plaintiffs are in possession and enjoyment of the suit property for the past thirty years and that there was no obstruction or obstacle from any quarter and that B memo tax has been collected from the plaintiffs by the Government are false. The defendants have not made any attempt to evict the plaintiffs from the suit property with the help of rowdy elements at any point of time much less on 17.12.1990 with the help of the rowdy elements. The deffendants have not made any attempt to destory the houses of the plaintiffs with the help of bulldozers on 17.12.1990. The plaintiffs 1 to 5 have encroached into the suit propeprty and have put up huts in Survey Nos. 75/3 and 76/3 of Uppilipalayam Village, Coimbatore. The suit property is classified as Itteri poramboke which is very much valuable property situtate within the Corporation limits belongs to the Government. Since the plaintiffs have received encroachers Notice under Section 7 of the Land Encroachment Act has been issued to them. Since 13th defendant-Government was contemplating action by way of issuing notice under Sectiooon 6 of the Land Encroachment Act as a counterblast, the plaintiffs have filed the suit in collusion with the defendants 2 to 12. The plaintiffs along with defendants 2 to 12 are making attempts to grab at the Government property. The plaintiffs along with other encroachers have filed a writ petition in W.P.NO.5198 of 1990 before the High Court of Judicature and the same is pending. Hence the suit is not maintable and encroacher cannot file the suit of this nature against the owners. The Government has already initiated proceedings under the Land Encroachment act to evict the plaintiffs from the suit property. The plaintiffs have no cause of action to file the susit. Hence the suit ie liable to be dismissed.

5. The first defendant in his additional written statement would contend that without mentioning the classification , it cannot be said

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that the suit property is a poramboke land. A Commissioner was appointed and during his visit, the Commissioner asked the Government authorities to produce certain government records but they were not produced by the 13th defendant. The plaintiffs have colluded with the 13th defendant to file the suit only to get patta in favour of him. No "B" memo can be issued to Etteri road or Etteri land ie., in respect of the suit S.nos.75/3 and 76/3. In order to escape from the liability, 13th defendant has added as a party to the writ petition.

6. On the above pleadings, the trial Court had framed two issues for trial. On the side of the plaintiffs, the third plaintiff has examined himself as P.W.1. One Thiru Gopalakrishnan was examined as P.W.2 Exs A1 to A14 were marked on the side of the plaintiffs. On the side of the defendants, D.Ws 1 to 3 were examined and Exs B1 to B12 were examined. A Commissioner was appointed and he filed his report Ex C1 and plan Ex C2.

7. After going through the documentary evidence available on record, the learned trial Judge has come to the conclusion that the plaintiffs have not proved their case to get an order of injunction and consequently dismissed the suit. Aggrieved by the findings of the learned trial Judge, the plaintiffs have preferred an appeal in A.S.No.63 of 1996 before the II Additional District Judge, Coimbatore. The first appellate Court after scrutinzing the evidence let in before the trial Court both oral and documentary, and after considering the rival submissions of the learned counsel appearing for the appellants as well as the respondents, has come to a conclusion that the plaintiffs are entitled to get an order of injunction as prayed for and the follow up measure, he allowed the appeal thereby setting aside the decree and judgment of the trial Court in O.S.No.3163 of 1990 dated 24.2.1995. Hence the second appeal preferred by the defendants 1 to 12 before this Court.

8. The substantial question of law involved in this appeal is

" Whether the respondents 1 to 5 as trespassers are entitled to the permanent injunction?

9. The Point:

The plaint schedule property is admittedly a road poramboke . EX A1 is the assessment order given by the Government in favour of the plaintiffs to grant house patta in their name. So it cannot be said that the plaintififfs are unauthorisedly in occupation of the plaint schedule properties. A Commissioner was appointed in this case and he has filed Ex C1 report and Ex C2 plan. A perusal of Ex C2 plan will go to show that the plaintiffs huts are along with the bund in Survey Nos.75/3 and 76/3 which leads to the burial ground situated in S.No.79/5. Between the burial ground and the huts put up by the plaintiffs in S.No.75/3 and 76/3 lies the defendants lands on the north and also on the east. It is evident that on 17.12.1990, the defendants along with their henchmen made an attempt to evict the plaintiffs from the suit property. To show their possession in respect of the suit property, the plaintififfs hahve filed

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Exs A3 to A5 "B" memos and also Exs A7 to A10 tax receipts. Exs A11 and A12 are the eviction notice issued by the Government against 5th and 1st plaintiffs respectively. Ex A13 and Ex A14 are also the same nature. So the contentions of the learned counsel appearing for the appellants is that the plaintiffs have no right or title in respect of the suit property and the suit property belongs to the Government being road poramboke, since the Government have initiated proceedingns to evict the plaintiffs from the suit property, no relief can be granted to them and that the first appellate Court erroneously allowed the appeal preferred by the plaintiffs thereby granted an order of injunction in their favour which is to be vacated.

10. The learned counsel appearing for the respondents relying on a decision reported in M.Kallappa Setty -v- M.V.Lakshminarayana Rao(AIR 1972 SUPREME COURT,2299) and contended that the plaintiff who is in possession of the suit property , he can on the strength of his possession resist interference from defendant who has no better title than himself and that his possession can be protected by way of an order of injunction. The short facts of the above said dictum is that the plaintiff who was in possession of a building site measuring 80 x 40 feet within the municipal limits of Birur, claims that he had purchased the same from one Banavarada Abdulla Saheb for a sum of Rs.100/- on 11.1.1947 and that eversince the purchase, he was in possession of the suit property and before the sale in his favour, his vendor was in possession of the suit property and his sale deed contains the survey numbers as well as boundaries. Later, the plaintifif came to know that the survey number stated in his sale deed was not correct and the correct survey number for the suit property is 1719 instead 1711. In the mean time, since the vendor died, he obtained rectification deed from the son of the vendor on 24.12.1950. Thereafter, he got the registry rechanged his name without notice to the plaintiff The plaintiff has filed suit for declaration of his title and also for permanent injunction. The trial Court decreed the suit as prayed for . The first appellate Court also confirmed the decision of the trial Court. In the second appeal, High Court reversed the decree of the Courts below and dismissed the plaintiff's suit. Hence the plaintiffy before the Apex Court. The ratio laid down by the Apex Court in the above said decision is as follows:

> " The plaintiff can on the strength of his possession resist interference from persons who have no better title than himself to the suit property. Once it is accepted, as the trial Court and the first appellate Court have done, that the plaintiff was in possession of the property eversince 1947 then his possession has to be protected as against interference by some one who is not proved to have a better title than himself to the suit property. On the findings arrived at by the fact finding Courts as regards possession, the plaintiff was entitled to the second relief asked for by him even if

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> he had failed to prove his title satisfactorily. Therefore, in our opinion, the High Court was not right in interfering with the judgment of the trial Court as affirmed bythe first appellate Court regarding relief No.2."

and ultimately the Honourable Apex Court has held that the plaintiff is entitled to get an order of injunction even though he is entitled to the relief of declaration in respect of the suit property.

11. The other dictum relied on by the learned counsel for the respondents in Krishna Ram Mahale (dead) by his Lrs-v- Shobha Venkat Rao (1989 )4 Supreme Court Cases, 131) wherein it has been held that forcible possession can be dispossessed by way of order of injunction and that when the trial Court and High Court hahve concurrently held that landlord (appellant) unlawfully obtained possession of the premises and the business conducted therein by surreptitiously dispossessing the licensee (respondent )behind her back and the landlord made every effort, right and wrong, to retain the possession so obtained by filing bogus suit, leading false evidence and making reckless statements before Courts with a view to avoid compliance with the decree passed against him and to delay the matters. No interference can be made by the Apex Court regarding the findings of the fact and that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. The exact observation in the above said dictum runs as follows:

> "Mr.Tarkunde, learned counsel for defendant 3, the appellant herein, rightly did not go into the apprepciation of the evidence either by the trial Court or the High court or the factual conclusions drawn by them. It was ,however, strongly urged by him that the period of licence had expired long back and the plaintiff was not entitled to the renewal of licence. It was submitted by him that in view of the licence having come to an end, the plaintiff had no right to remain in charge of the business or the premises where it was conducted and all that the plaintiff could ask for was damages for unlawful dispossession even on the footing of facts as found by the High Court. We find ourselves totally unable to accept the submission of Mr.Tarkunde. It is a well settled law in this country that where a person is in settled possession of property, even on the assumptioon that he had no right to remain on the property , he cannot be dispossessed by the owner of the property except by recourse to law. If any authority were needed for that proposition, we could refer to the decision of a Division Bench of this Court in Lallu Yeshwant Singh.v.Rao Jagdish Singh.

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> This Court in that judgment cited with approval the well known passage from the leading Privy Council case of Midnapur Zamindary Company Limited.v.Naresh Narayan Rot where it has been observed.(51 IA 293 = AIR 1924PC 144 = 23ALJ 76 wherein it has been observed that " In india persons are not permitted to take forcible possession, they must obtain such possession as they are entitled to through a Court". The proposition was also accepted by a Division Bench of this Court in Ram Rattan .v.State of Uttar Pradesh.(1977)1SCC 188=1977 SCC (cri) 85= 2 SCR 232) The Division Bench comprising of three learned Judges held that a true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances, the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under the law".

12. The learned counsel appearing for the appellants placed his reliance was a well known dictum in Alagi Alamelu Achi .v. Ponnia Mudaliar(AIR 1962 Madras 149(V 49 C 27) wherein it has been held by a learned Judge of this Court as follows:

> "A person in wrongful possession once the lower appellate Court found that the plaintiffs' possession is wrongful, it immediately followed that such possession, is not entitled to protection by an injunction, because such an order will be only assisting the plaintiffs in their wrongful possession. No court can by its own order help a party who is found to be in wrongful possession as against the lawful owner. The fact that if the lawful owner were to institute a suit, he might possibly fail on the ground that he was not in possessioon within 12 years of suit, could make no difference and that cannot, in my opinion, be a proper justification for the issue of an injunction virtually maintaining or advancing the wrongful act of the plaintiffs."

But the abovesaid dictum will not be applicable to the present facts of the case because even according to 13th defendant/Government under EX A1 assessment order, the plaintiffs have been permitted to occupy the road poramboke in Survey Nos 75/3 and 76/3 Uppilipalayam Village. Under such circumstances, it cannot be said as rightly held by the learned first appellate Judge that the possession of the plaintiffs in respecpt of the suit property is illegal. Under such circumstances, the lawful possession of the plaintiffs over the plaint schedule property is to be protected by

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way of an order of injunction since it is the definite case of the plaintiffs that the defendants are attempt to evict the plaintiffs from the suit property by resorting to third decree method, with the help of hooligans and thugs are threatening the plaintiffs to vacate the suit property.

13. The learned counsel appearing for the appellants would contend that the first appellate Court has simply allowed the appeal preferred by the plaintiffs but there was no observation to the effect that the plaintiffs can be in the suit property till they are evicted under due process of law. On behalf of the defendants, it is also admitted that the eviction proceedings has been taken by 13th defendant Government to evict the plaintiffs from the suit property. Under such circumstances, I am of the view that the order of injunction can be granted in favour of the plaintififs till they are evicted under due process of law. Point is answered accordingly.

14. In the result, the appeal is dismissed confirming the decree and judgment in A.S.No.63 of 96 on the file of the Court of Second Additional District Judge, Coimbatore, only with the modification that the order of an injunction is granted as prayed for in the plaint till the plaintiffs are evicted from the suit propeprty under due process of law. The plaintiffs are entitled to costs throughout, from the appellants/D1 to D12.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The II Additional District Judge,Coimbatore

2. The Prl.District Munsif, Coimbatore.

3. The Record Keeper, VR Section, High Court, Madras.

+ 1 CC To Mr. V.Nicholas, Advocate SR NO.7350

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